

Remarks

The Examiner's comments and objections and the cited references have been carefully considered by the Applicant.

The amendment filed on November 13, 2001 have not been entered as raising new issue. Furthermore, the Examiner took the position that even if the amendments were entered, the amended claims would not overcome the objections raised in the Final Action.

Amended claim 1 now submitted does not contain indefinite language and includes the feature that the pattern creased on the material does not present breaks causing breakage when the material is folded along the lines of the creased pattern. Support for this feature can be found in the original specification, on page 3, lines 1-3.

Amended claim 5 specifies that the layer having gas barrier properties which is coated on one side with the polyester film, is used in such a small percentage, referred to the film, that the coated film can be considered for recycling as formed only of polyester material.

Original claims 1-21 have been rejected in the Final Action under U.S.C. 103(a) as being unpatentable over Martin Jr. in view of the various secondary references recited therein. The rejection is respectfully traversed.

The presence of a material which is not a polyester resin is excluded in the material as claimed in amended claim 1.

On the contrary, the multilayer material which would be obtained by replacing the paperboard substrate of Martin Jr. with the allegedly equivalent thermoplastic material would always contain a polyolefin layer. To obtain a material containing only polyester resin, the material of Martin Jr. should be further modified to eliminate the polyolefin layer. However, this modification would render the material of Martin Jr. unsatisfactory for its intended purpose and change its principle of operation, the polyolefin layer being the core of the invention of Martin Jr. (see e.g. col. 4, lines 17-44)

It is accordingly submitted that the combination of Martin Jr. with the secondary references is improper and would constitute a prohibited insight reconstruction.

Thus, the teachings of the opposed references are not sufficient to render the claimed subject matter obvious (*In re Ratti*, 270 F.2d 810, 123 USPO 349).

In addition, at the time the invention was made, it was well known that thermoplastic foamed sheets, such as polyethylene and polyester foamed sheets, break when folded along lines of a pattern creased thereon (original specification, page 2, line 2-11). In fact, even a PET foamed sheet as such, without any adhered film of a melting polyester, breaks when folded (test of Dr. Giovannini's Declaration).

Accordingly, at the time the invention was made, the skilled person would not have had any expectation of success in making the replacement as indicated by the Examiner.

Particularly, the container of Ochiai et al. is formed by gradually pushing the foamed sheet into a cavity of a mold by pouring into it the molten hot melt adhesive which, while solidifying, adheres to the surface of the sheet and incorporates it in an unitary body, possibly sealing any break occurring along the lines of the creased pattern. In no way can it be said that this implies that it was

USSN. 09/334,891  
A.U. 1772  
Facsimile Transmission of January 28, 2002

Page: 6

known from Ochii et al. that a PET sheet can be successfully used to form beverage tight containers. The Declaration of Dr. Giovannini shows in fact the contrary.

It is submitted that there is no suggestion or motivation, either in the references them selves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine reference teachings so as to obtain the claimed material.

According to the Examiner, when a pattern is creased on a sheet, break inevitably occurs and the folding of the sheet would require expansion of the breakage. It is the presence in the claimed material of the low melting point polyester film adhered to the foamed sheet which avoids the break of the foamed sheet and expansion of the breakage upon folding. When any hindsight is avoided, it clearly appears that the inventors of the present invention were the first to find it.

It will be noted that a sincere effort has been made to positively respond to all of the points raised by the Examiner.

In view of the foregoing, favorable action on the merits, including entry and approval of all amendments, reconsideration and withdrawal of each rejection and allowance of all claims is respectfully solicited.

Respectfully submitted,



Guido MODIANO (Reg. No. 19,928)  
Agent for the applicant

Date: January 28, 2002  
Address: Via Meravigli 16, 20123 MILAN-ITALY  
Telephone: (from USA) (011)(39)(02)85.90.77.77  
Telefax: (from USA) (011)(39)(02)863-860